91-2040 (2)

No.

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

J.M., guardian ad
litem of his unborn child

Petitioner,

-against-

V.C.,

Respondent.

VOLUME I OF PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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JOHN DOE, a fictitious name of a real person, individually; JOHN DOE, a fictitious name of a real person, guardian ad litem for his unborn infant child, Plaintiff, vs. JANE ROE, a fictitious name of a real person; XYZ ABORTION CLINIC, INC. a fictitious name of real corporation doing business in the State of New Jersey; JOSEPH BLOW AND RICHARD ROE fictitious names of real individuals who are employees and agents of the defendant Corporation, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 Civil Action VERIFIED COMPLAINT

John Doe, a fictitious name of a real person, by way of Complaint against the defendants, says:

FIRST COUNT

1. John Doe, a fictitious name of a real person whose identity is disclosed in an affidavit filed with the court under seal, is a 38 year old man who resides in Monmouth County, New Jersey. Jane Roe, a fictitious name of a real person whose identity is disclosed in an affidavit filed with the court under seal, is a 32 year old woman who resides in Monmouth County, New Jersey. XYZ Abortion Clinic, Inc., a fictitious name of a real corporation doing business in the State of New Jersey, is a corporation which maintains facilities for medical procedures which include abortions, and is located in Monmouth County, New Jersey. The defendants Joseph Blow and Richard Roe, fictitious names of real persons, are employees and agents of XYZ Abortion Clinic, Inc., both of whom assist, direct and perform abortions at the location for XYZ Abortion Clinic, Inc.

2. In July of the year 1991, the plaintiff John Doe met the plaintiff Jane Roe and shortly thereafter started dating. In September of 1991, the plaintiff first proposed marriage to the defendant, Jane Roe, who advised the plaintiff that she would

consider marriage but it was premature at that time. Thereafter, Mr. Doe and Ms. Roe continued to date and their relationship grew. The plaintiff maintains that he loves the plaintiff Jane Roe and she has expressed similar feelings and emotions for him. In January of 1992 the defendant Jane Roe became pregnant with a child father by the plaintiff, John Doe. In February of 1992 Ms. Roe suspected pregnancy and personally performed a test which proved positive for pregnancy. She so advised the plaintiff and a repeat test was done while he was present. That test was also positive.

3. Upon initially hearing of Ms. Roe's pregnancy, the plaintiff was exhilarated and happy. He expressed optimism about the joy that they would derive from the two of them forming a new family. The plaintiff immediately proposed marriage and expressed his desire to assist in the rearing of the child. The defendant, Jane Roe, advised the plaintiff that she believed that she wasn't prepared to rear the child at this time and was considering an abortion to terminate the life of the child.

4. The plaintiff John Doe has continually advised the defendant, Jane Roe that he is prepared to marry her and live up to his obligations as father to the child. He has also advised her

that in the event she could not feel able or was unwilling to rear the child that he would do so without her assistance. On Monday, March 2, 1992, the defendant Jane Roe went to a doctor located in Monmouth County, New Jersey. Subsequent to her visit, she advised the plaintiff that the doctor confirmed that she is pregnant and that the unborn child is approximately eight weeks post conception. The plaintiff has continued to counsel defendant Jane Roe and advised her that he offers support for her and the child in any way necessary.

5. On Wednesday, March 4, 1992, defendant Jane Roe advised the plaintiff that she had determined with certainty that she would seek an abortion. She has continuously and at all times acknowledged that the plaintiff was the father of her unborn child. On Wednesday, March 4, 1992, the defendant Jane Roe advised the plaintiff that she scheduled an abortion for the morning of Wednesday, March 11, 1992 at a location in Monmouth County owned, controlled and operated by the defendant XYZ Abortion Clinic, Inc. and its agents and employees.

6. The plaintiff has a legal and moral obligation to discharge his duties to his unborn child. During the week of March 2, 1992, the defendant Jane Roe advised the plaintiff that she thought that

it was an equal obligation that they share the cost of the abortion. The plaintiff, a Catholic, has a deep belief that he has a moral duty to avoid in assisting in the termination of the life of his own child. He further holds a religious belief that he has a moral obligation to do what is necessary by way of affirmative action to care for, nurture and preserve the life, welfare and best interests of his unborn child. He therefore advised the defendant Jane Roe that he could not in good conscience spend money to terminate the life of his child. He believes that it is his obligation to pay considerably larger sums of money to preserve the life of his child and therefore he began to seek counsel on Thursday, March 5, 1992. On March 6, 1992, he contacted the attorneys of record and retained their services, the following day, Saturday, March 7, 1992.

7. As a matter of fact, the plaintiff's child fathered with the defendant, Jane Roe, is, at the age of eight weeks, a complete living human being at early stages of development. The unborn child is a member of the human race, is a human being and is a person. The unborn child has been and is currently a separate human being from his or her mother, with a complete and separate identity. The unborn child enjoys constitutional protection under the Fourteenth Amendment of the Constitution of the United

States and Article One of the Constitution of the State of New Jersey. As natural father, the plaintiff is acting as the guardian ad litem of his unborn child. The State of New Jersey, which licenses, regulates and supervises the medical activity at and on the premises of the XYZ Abortion Clinic, Inc., licenses, regulates and supervises the nurses and doctors at XYZ Abortion Clinic, Inc., would deprive the plaintiff's child of his or her constitutional rights if the state fails to intervene at the request of the plaintiff by denying the injunction he seeks.

8. The plaintiff, as father of his child, possesses a constitutional right to continued companionship with his child, has a constitutional right to procreate, has a constitutional right to discharge his obligations to his child. In addition, the plaintiff has the constitutional right to freedom of religion, the freedom to exercise the religion as he sees fit as long as it doesn't interfere with the legitimate rights of the state, his child and the child's mother.

9. The unborn child has the constitutional right to life both under the State Constitution and the Federal Constitution. The plaintiff has both the legal and moral obligation to protect the child's life and has the constitutionally protected right both under

the Fourteenth Amendment and the State Constitution to defend the life of his own child. The failure of the State of New Jersey to enter injunctive relief preventing the taking of the life of the plaintiff's unborn child, would be a constitutional deprivation of both the rights of the father and the child.

WHEREFORE, the plaintiff demands judgment on this count against the defendant, Jane Roe as follows:

a. Enjoining her from seeking an abortion anywhere in the State of New Jersey until further order of the Court;

b. Enjoining her from taking any action directly or indirectly aborting the child either individually or with the assistance of others in the State of New Jersey or elsewhere;

c. Enjoined her from leaving the State of New Jersey until further Order of the Court;

d. Enjoining her from disclosing her true identity or the identity of the plaintiff as long as the unborn child is alive or until further Order of the Court;

e. Or any other relief that the court deems just.

SECOND COUNT

1. The allegations contained in the First Count of this Complaint are incorporated by reference as if set forth at length herein.

2. The defendants, XYZ Abortion Clinic, Inc., Joseph Blow and Richard Roe, individually and in concert have arranged to have scheduled a medical procedure at the XYZ Abortion Clinic, Inc. hospital facilities on Wednesday, March 11, 1992 for the purpose of terminating the life of the plaintiff's unborn child. Their direct and indirect participation is material to the defendant Jane Roe's plan to terminate the life of the child she carries, fathered by the plaintiff.

WHEREFORE, the plaintiff demands judgment on this count against the defendant, Jane Roe as follows:

a. Enjoining each of them, their agents and employees from assisting Jane Roe in an abortion anywhere in the State of New Jersey until further order of the Court;

b. Enjoining each of them, their agents and employees, from taking any action directly or indirectly aborting the child either individually or with the assistance of others in the State of New Jersey or elsewhere;

c. Enjoining each of them, their agents and employees from disclosing the true identity of Jane Roe, or the identity of the plaintiff as long as the unborn child is alive or until further Order of the Court;

d. Or any other relief that the court deems just.

CASSIDY, FOSS & SAN FILIPPO
Attorneys for Plaintiff

BY: /s/ Harold J. Cassidy
HAROLD J. CASSIDY

VERIFICATION

1. I am John Doe, the plaintiff in the above entitled matter.

2. I have read the foregoing Complaint and on my own personal knowledge, I know that the facts set forth herein are true and they are incorporated in this certification by reference.

3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ John Doe
JOHN DOE, a fictitious name of a real individual whose identity is disclosed in an affidavit simultaneously filed with the Court and submitted under seal

DATED: March 8, 1992

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JOHN DOE, a fictitious name of a real person Plaintiff vs. JANE ROE, a fictitios name of a real person, et al. Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. Civil Action CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF PLAINTIFF, JOHN DOE, IN SUPPORT OF APPLICATION FOR INJUNCTIVE RELIEF

John Doe, a fictitious name of a real person, being of full age, deposes and says:

1. John Doe is not my real name, but is a fictitious name that is being used for this law suit only. At the same time I file this certification, I file another certification which is submitted to the court in a sealed envelope which discloses my true name, present address, as well as the true name and address of the defendant named in this suit as "Jane Roe". I have filed an application with the court requesting that that particular certification be filed under seal and not be made part of a public record. Jane Roe is a

fictitious name of a woman that I have been dating since July of 1991. At the present time, she is eight weeks pregnant with my child. She has, under the circumstances described below, disclosed to me her intention to terminate the life of our child and the abortion procedure she seeks is scheduled for Wednesday, March 11, 1992. I seek to preserve the life of our child and ask the Court to enter an Order enjoining Jane Roe from submitting to the procedure and enjoining those employees of the stated hospital or abortion clinic from performing the abortion.

2. Firstly, I would like to comment on my beliefs concerning the importance of the preservation of the identity of Jane Roe. I seek to protect the identity of both the plaintiff and the defendants in this case for the best interests and well being of both Jane Roe and our infant child. For myself, my own privacy is not of importance. I ask that the court permit the suit to go forward in the name of John Doe, however, because I believe that once my identity is known the identity of my child and the baby's mother could be learned. I am advised by my attorneys that these pleadings are a matter of public record, and once in the public domain are discoverable by anyone who seeks them.

3. I am very concerned that Jane Roe's privacy and identity be kept anonymous. At the present time she is eight weeks pregnant with our child. I have offered to marry her and I have told her of my desire to fulfill my obligations as father, both in assisting with the raising of the child and in extending financial support, whether or not she decides to marry me. I am presantly 38 years of age and Jane Roe is presently 32 years of age. However, I know that her decision to terminate the life of our child has been difficult for her. The plight of any unwed mother when she discovers she is pregnant is always one which requires compassion and understanding. This is particularly true with Jane Roe. I love her and I understand what a good person she is. I have no reason to believe that Jane is motivated by anything other than what is the right thing to do. I have expressed my beliefs at what is right and she has shared her thoughts with me. We are in disagreement. I do not believe it would be right for me or anyone else to deliberately make her circumstances more difficult than they currently are. I recognize that as the mother who is carrying the child she is in a different position that I am and the decision making process concerning the future life of our child may be more difficult for her. I ask that the Court honor my request that her

true identity as contained in my other certification that I filed with the court in a sealed envelope, not be disclosed. I also ask the court to take whatever steps that are necessary to see that other's don't disclose her name. This is not only for her sake but for the sake of our child.

4. I truly believe that it is important for our child that the fact of this law suit is never known by him or her. I hold out hope, and I possess a measure of trust, that this law suit may well result in saving the life of our unborn child. If that happy result is achieved, then I think it is important for the well-being of our child that he or she never know that this dispute took place. I fervently hope that Jane Roe voluntarily changes her mind, but if she does not and this suit is successful, in the long run I do not believe it is good for our child or Jane for the child to ever learn that the baby's mother intended to terminate his or her life. I therefore strenuously urge the court to do everything in its power to protect the identity of our unborn child. If it is necessary to protect my identity so it is not subsequently discovered, then I ask that the plaintiff's name be protected as well.

MY INTENTIONS AND THE RELIEF SOUGHT IN THIS SUIT

5. My purpose in filing this suit is to preserve the life of my child. I believe that that is both my legal and my moral obligation. Once our child's life is out of danger, I would seek to fulfill my obligations to my child. I shall live up to my financial obligations and shall take the responsibility of being a father to our child, whether or not Jane ever agrees to marry me. As far as my parenting role in the life of the child is concerned, it in large part depends upon Jane's wishes. I have been advised by my attorney that if Jane gives birth to our child, under existing New Jersey Law, and the circumstances of this case she essentially has the right to choose to be the primary custodian if we are not married. If Jane chooses to be the primary custodian of the child, I would respect her wishes and do the best job I can as a father in whatever role I can play within the limits of the court's permission. In the event Jane chooses not to be the primary custodian of our child, I would be more than delighted to fulfill that role. Naturally, I would welcome the circumstance in which both Jane and I can raise the child together. If I am not the primary custodian of the child, it is my intention to live up to my financial obligations as well as my obligations as a father.

6. In the current lawsuit, I seek to preserve the child's life. I have been advised by my counsel that a suit dealing with the custodial arrangement of the child (if a dispute were to arise) would wait until it has been determined if the child's life has been preserved.

BACKGROUND

7. Both Jane and I have had first marriages and both of us are divorced. I started dating Jane in July of 1991. Over the past year we have both expressed love and affection for one another. Even prior to the conception of our child eight weeks ago, we discussed marriage.

8. When Jane first told me that she was pregnant in February of 1992, I was very excited. Obviously we did not plan this pregnancy, but when I learned that I would become a father at the age of 38, I was overjoyed. The news, to me, was wonderful and caused not only joy, but celebration. I discussed marriage with Jane, but she expressed confusion and doubt. She didn't know if she was ready to raise the child and commit to marriage and motherhood. I love Jane and I have done the best I could to understand her feelings and the position she is in. I know that she faced, for her, a very difficult decision. If Jane actually obtains the

abortion, she may regret it the rest of her life. Whatever legal and moral rights she may have, she must make the decision for herself. What I seek to do in this suit is not to make decisions for her, but to exercise what I perceive to be my own fundamental obligations to my child, and obligations to myself. Whatever legal and moral rights she may have, they can only be viewed in the context of the consequence of her act upon our child and also on my own rights and obligations. I don't wish to denigrate her concerns she may have. When balanced, however, I believe that her concerns are far outweighed by the considerations of the loss of our child's life and the denigration of my own rights and perhaps, the denigration of my own sense of duty and sense of obligation.

MY DECISION TO FILE THIS SUIT

9. It was on Wednesday, March 4, 1992 that Jane told me with certainty that she would seek an abortion. Until that time I had believed there was a chance that I could persuade her that we could raise the child and she should not do anything to jeopardize the baby's life. She told me that she made an appointment to have the abortion and she gave me the identity of the clinic where it would be performed. She asked me to contribute to half of the costs of the abortion because "we are equally obligated." It was

on Thursday, March 5, 1992 that I decided to seek legal counsel. It was on that day that I made calls to secure an attorney and I retained counsel on Saturday, March 7, 1992.

10. My moral and legal obligations are clear. When Jane, without meaning any harm or hurt, suggested that I pay for half the costs of an abortion, I realized that I am morally obligated to refuse to assist the taking of the life of my own child. I would prefer and feel required to expend greater sums of money in an effort to save my child's life, rather than spend a mere couple of hundred dollars to take that life.

11. I believe that I have a moral and legal obligation to take whatever legal action is necessary to save the life of our child. I am a Roman Catholic and I believe in many of the teachings of the Catholic Church. I believe that life begins at conception and we all have an immortal soul. I do not believe that I am free to think that the obligations to our child are that of the child's mother only. My responsibilities exist independent of hers and my obligations include not only to refrain from assisting in terminating the life of our child, but taking whatever action is appropriate and necessary to preserve the child's life. A failure to do so would be a failure to discharge my legal and moral obligations. The beliefs that I

espouse in this particular paragraph are part of my religious beliefs and I believe that I will be held accountable if I do not discharge these obligations in a fair way.

12. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ John Doe
JOHN DOE, a fictitious name of a real person whose identity is disclosed in an accompanying affidavit presented to the court sealed.

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JOHN DOE, a fictitious name of a real person Plaintiff vs. JANE ROE, a fictitios name of a real person, et al. Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. Civil Action CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF PLAINTIFF, J M , THE PLAINTIFF DESIGNATED BY THE FICTITIOUS NAME

J M being of full age, deposes and says:

1. My name is J M and I am 38 years of age. My social security number is . My current address is with my mother at , New Jersey . I recently sold my residence in Long Branch and since March 1, 1992, six days ago, I temporarily , New Jersey known as the . I have been in .

2. I checked into the because it is near and I wanted to be close to my girlfriend and the mother of my child and

this particular time. It was Monday, March 2, 1992 that a doctor confirmed that my girlfriend, designated Jane Roe in the caption of this suit was pregnant with the child I fathered.

3. The woman designated Jane Roe in this case is V C, who resides at , New Jersey.

4. I first learned that V was pregnant at the end of February. V had first performed a test that was positive. Then a test was conducted in my presence which was also "positive". It was at that time that I felt elated and expressed my desire to marry V . It wasn't until March 2, 1992 that V was at a doctor's office in F . I don't remember the doctor's name, but V told me that the doctor's test was positive and the doctor confirmed that the baby was eight weeks old. On Wednesday, March 4, 1992, V told me that she definitely made up her mind that she would have an abortion. She knew how strongly I felt, but for her own reasons she felt that the situation wasn't right. She told me that she had an appointment for Wednesday morning March 11, 1992 at an abortion clinic in , New Jersey. The name of that clinic is the and is located at , New Jersey. In my effort to keep V identity protected and for her sake as well as the sake of our child, I am

asking the court to seal this certification to protect even the name of the clinic. The Orders that I seek, if granted, should not contain the name of the clinic because I fear that V 's identity would be learned. For that reason, I have requested that the form of an Order for an Injunction include restraints against all involved from disclosing the identity of the unborn child's mother.

5. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ J.M.
J M

Dated: March 8, 1992

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J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF HAROLD J. CASSIDY, ESQ. SUBMITTED UNDER RULE 1:4-4(c) (FACSIMILE SIGNATURE)

Harold J. Cassidy, being of full age, deposes and says:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Cassidy, Foss & San Filippo and I am thoroughly familiar with the manner in which a certification was received from Dr. Jerome LeJeune from Paris, France.

2. The certifications in lieu of oath or affidavit that was submitted by Dr. LeJeune contained a signature which is a facsimile of the original signature.

3. This is to certify that Dr. LeJeune acknowledged the genuineness of the signature. I personally spoke to him on Wednesday morning, March 18, 1992. I certify to the court that if requested I shall secure an original signature from Dr. LeJeune. Naturally, there is a certain process and a certain period of time that this would take.

4. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Harold J. Cassidy
HAROLD J. CASSIDY

DATED: March 18, 1992

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J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF JEROME LEJEUNE

Jerome LeJeune, being of full age, deposes and says:

1. I am a resident of Paris, France. I am on the faculty of the Medical School at the University of Paris (France) and a professor at the Research Center of the Human Genetics and Brain Diseases, which has the following address:

Centre De Recherches
Genetique Humaine Et
Maladies De L'Intelligence

Institute De Progenes
45, rue des Saints-Peres
75270 Paris Cedex 06

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony is attached to this certification.

3. All of the genetic information necessary and sufficient for a particular human being exists at the moment when the human life begins at conception. The life of each of us commences at the moment that the genetic information is complete and a unique individual is created. This event occurs when the head of the male sperm penetrates inside the female's ovum. The information carried by the father encounters in the same recipient cell the information carried or transmitted by the mother so that suddenly, almost instantaneously, a new constitution is spelled out in genetic terms.

4. The once held belief that a mother contributes to the make up of the child following conception is now known with certainty

to be false. Everything that is necessary to be a human being is present immediately after conception. Either the whole information is present for conception of a human being (and development to full stages of growth) at the moment after the entry of the sperm into the ovum or the genetic information is insufficient and no human being shall develop and conception will fail.

5. The completeness of the human being immediately upon conception is such that there is a specificity of both the species and the complete identity of the individual member within the species. Not only is it possible to identify the resultant cell after conception as being human in nature, the individual identity or person is known and can be identified. In each instance, this marvelous phenomenon at the moment of fertilization (conception) is a pure novelty which has never occurred before in the history of mankind: a new constitution of a personally devised constitution for a particular person. This new constitution is complete in all of itself which is capable of being identified, its genetic material being capable of being read and the makeup of chromosomes complete. We have, in short, a human being immediately after the moment of conception.

THE PROCESS OF FERTILIZATION

6. Just prior to conception there are thousands of sperm swimming around one single female egg and through the process of nature, one sperm is elected which will penetrate the egg or ovum. There is in this process of fertilization an extraordinary device employed by nature to protect the privacy of the life of the person immediately upon conception. The right of privacy is actually written into the law of nature. The egg, which is a little sphere of one and one-half millimeters in diameter, is protected by a transparent membrane which completely covers the egg. This membrane is known as the zona pellucida. Immediately upon a sperm burrowing inside the zona pellucida, the transparent membrane suddenly becomes physically changed. Within micro seconds it becomes completely impenetrable by any other sperm.

DNA AND THE SOURCE OF GENETIC INFORMATION

7. The necessary genetic information to create a human being is contained in DNA, a long thread molecule. Physically, it is analogous to a minute flat ribbon of tape that is used in a tape recorder. Inside the head of a sperm is a long thread of one meter or so which is so tightly coiled in twenty-three little pieces that the whole of its volume can be put upon the point of a needle. These twenty-three pieces are chromosomes. The ovum also contains

twenty-three little chromosomes. In addition, inside the ovum there are billions of molecules specialized which will recognize and be recognized by the signals given by the genetic make up. The information provided by the male sperm is approximately fifty billion bytes of information. However, the information contained inside the egg is much greater, so much so that it is presently uncountable, so that the greatest computers cannot hold the amount of information which is inside one reproductive cell once fecundation occurs.

8. This process is like a tape recorder which plays music. If one places a mini cassette on which the music of an artist such as Mozart is recorded and put it in a tape recorder, you experience the sound of a symphony. The tape itself has no notes of music and there are no musicians. Because there is a special code written on the tape, information is conveyed in such a way that the tape recorder will read it and make air move through a loud speaker. What is being experienced by the listener is not an orchestra, not musicians, not evidence of music, but the genius of the author. That is how life is played: inside the egg, which receives the tape band from the father and which has its own tape bands, there forms a sort of table or law of life. Within the egg is a tremendous

amount of information to be received and interpreted. The genetic information necessary to form the completed human being is not only the long ribbon of DNA (which through the analogy is the mini cassettes of the symphony) but information in the cell itself, which reads it. The cell is analogous to the magnetiscope of the tape recorder and possesses within it enormous information.

THE RECENT DISCOVERY OF THE JEFFREY METHOD AND BAR CODE PERMITS IDENTIFICATION OF THE MEMBER OF THE HUMAN SPECIES IMMEDIATELY AFTER CONCEPTION AND SUPPORTS THE CONCLUSION THAT A HUMAN BEING EXISTS AT CONCEPTION.

9. Approximately four years prior to the trial in this matter a Englishman named Jeffrey made a discovery and developed a technique which has the capability of determining the identity of a particular human being. Jeffrey discovered that in part of the chromosomes the DNA is repetitive. It can be repeated as much as one hundred times, so if harm is caused to some of the segments, some of the sequence will provide the genetic function and the human being will survive. In his work, Jeffrey developed a method of extracting DNA and a technique for examining it. The technique creates the ability to record unique traits of the individual being examined. Jeffrey's technique has proven that

each person is unique and that the sequence of the bars that he is able to identify is absolutely typical of the person being examined and is specific to the individual. That the identity of the person or the individualization of the member of the human race takes place at conception has been confirmed by the Jeffrey method.

METHYLATION OF CYTOSINE REPRESENTS A VERY RECENT DISCOVERY WHICH EXPLAINS THE SCIENCE OF GENETICS PREVIOUSLY UNKNOWN. IT SUPPORTS THE CONCLUSION THAT THE HUMAN BEING IS A COMPLETE PERSON AT THE MOMENT OF CONCEPTION.

10. Totally unknown as recently as four years ago (and unavailable when Roe v. Wade was decided) was the process of Methylation of Cytosine (which is contained on a piece of DNA). What has been learned is that the DNA is even more sophisticated than previously suspected and the messages are written "letter by letter", piece by piece. There is basic information with indications that some information must be read immediately and some information must be read at a later time. What is meant by the Methylation process is that everything to make this particular human being exists at fertilization, but is not read at the instant of conception. This discovery was never expected ten years ago and never predicted: that, in fact, the father's genes underline

instructions to immediately produce the membranes inside which the embryo will develop itself (its space capsule) and to make the placenta which is the body by which it will take the nutrients from the vessels of the mother. That information is contained or underlined in the sperm not in the mother's egg. The male genetic material therefore builds the membranes which becomes the shelter and the placenta which is the food gathering system. The female information acting in concert with the male information provides the mechanism for the development of the parts of the physical anatomy.

11. All of this information and the sophisticated directive mechanisms is contained in the first cell. The significance of this information is that it was discovered that it is definitely ruled out that there can be a genetic constitution made from one parent only. It is not possible in an egg to put two pronuclei from the mother only. It will not be a human being. It can make "parts" such as skin, hair, teeth, some nervous cells, but not at all build a form and there will be no child. Essentially the same thing is true without the maternal nuclei. It will not form a human being. So it is absolutely required that, in the first cell, there be the DNA

underlined by Methylation in the male way and the DNA Methylation in the female way for there to be a human being.

12. The extraordinary observation made is that the only cell in all of the life of a person in which those two Methylation systems from father and from mother are present together inside one cell is in the very first cell which gives life to a person. At each progressive stage of development this Methylation is erased and replaced progressively as cells learn by a cascade of reaction to specialize so that some cells will develop to form the brain, another to make the liver, another to make bone, etc. It has been learned that the male way of "spelling" is obligatory for muscles so that even in the female information which builds the muscles has to be underlined in the paternal way. This understanding contradicts any previous notions that fetal development occurs only through the mother. It is now clear that the child is a complete human being programmed for life from conception.

THE SCIENCE OF GENETICS IRREFUTABLY CONCLUDES THAT A FERTILIZED EGG, IMMEDIATELY AFTER THE MOMENT OF CONCEPTION, IS A MEMBER OF THE HUMAN SPECIES, IS A HUMAN BEING AND IS A PERSON.

13. To conceptualize the person at the age of eight weeks post conception, we should describe what the child looks like. The child was only the size of a person's thumb measured from its head to it's "rump", one inch. Inside the human embryology the child can be visualized as a tiny human being with fingers, toes, a face and palm prints that you could read with a microscope. You would be able to see the child's sex. The child has a heart beat and with the mother there are two rhythms between her heart and the child's which are detectable. The child's heart beats about one hundred and forty times a minute if it is a boy and about one hundred and sixty times a minute if it is a girl. An abortion of an eight week only fetus kills a member of the human species. That there is completeness of the human being and its identity as a person from the moment of conception when its chromosomal make up is complete not only as to the species but as to the individual member of the human race is irrefutable. There exists a specificity of the uniqueness of a human being at the beginning of life, at fecundation, at fertilization at conception.

14. I understand that this certification is being submitted in the New Jersey Courts in a law suit entitled J.M. v. V.C., W.M.C., et al., currently pending in the Superior Court of New Jersey,

Chancery Division, before The Honorable Patrick J. McGann, J.S.C. I understand that this case is a civil action brought by the father of an unborn child seeking to enjoin an abortion. It is to be made part of the record on an Order to Show Case and in opposition to a motion to vacate the restraints.

15. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Jerome LeJeune
JEROME LEJEUNE, M.D.

DATED:

CASSIDY, FOSS & SAN FILIPPO
225 Broad Street, Box 896
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Co-Counsel for the Plaintiff

J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 <u>CIVIL ACTION</u> CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF JEROME LEJEUNE

Jerome LeJeune, being of full age, deposes and says:

1. I am a resident of Paris, France. I am on the faculty of the Medical School at the University of Paris (France) and a professor at the Research Center of the Human Genetics and Brain Diseases, which has the following address:

Centre De Recherches
Genetique Humaine Et
Maladies De L'Intelligence

Institute De Progenes
45, rue des Saints-Peres
75270 Paris Cedex 06

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony is attached to this certification.

3. I incorporate by reference the testimony I gave in the matter of State v. Loce in this certification. I understand that this certification is being submitted in the New Jersey Courts in a law suit entitled J.M. v. V.C., W.M.C., et al., currently pending in the Superior Court of New Jersey, Chancery Division, before The Honorable Patrick J. McGann, J.S.C. I understand that this case is a civil action brought by the father of an unborn child seeking to enjoin an abortion. It is to be made part of the record on an Order to Show Cause and in Opposition to a Motion to Vacate the Restraints.

4. I certify to Judge McGann and the New Jersey Courts that the testimony that I gave in the matter of State of New Jersey v.

Alexander Loce, et al., which is attached to this certification, is truthful and accurate and I incorporate it by reference.

5. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Jerome LeJeune
JEROME LEJEUNE, M.D.

DATED:

J E R O M E L E J E U N E, M.D., Ph.D., having been duly sworn according to law, testified as follows:

THE JUDGE: Doctor, I heard you pronounce your own name and we butchered it. So you may have a seat.

All right, you may proceed counsel.

DIRECT EXAMINATION BY MR. MULLANEY:

Q Doctor LeJeune, could you please for the record, state your name and how to spell it?

A Your Honor, my name is Jerome LeJeune.

Q We did butcher that one.

A Yes. I am a professor of fundamental genetics in the Children's Hospital of Paris and the Faculty of Medicine of Paris.

And I began as a pediatrician and then I became a geneticist. Now I am a pediatrician and a geneticist.

And in my consultation, which is probably the biggest in the world for mentally retarded children having difficulty due to a chromosomal mistake, we examine every year 2000 children, and we have record of 30,000 of them.

So our job is really to try to understand what makes the nature of every human being; why some of them are afflicted by constitutional difficulty, and to try later to treat that, if we can, so that we would be able to some day to bring them back to normal; and to give them what nature has refused to them.

Q Dr. LeJeune, could you please tell the Court a little about your educational background?

A As I staid I was MD and PhD, and have been always in Paris as a student.

And later when I finished by studying and I got my degree in medicine and genetics, I was representative of France in the United Nations scientific committee on the danger of atomic radiation, because I was a geneticist.

And in that function, international function, I came very often to the United States to go to the UN and I met one professor of California Institute of Technology.

And I was invited to give the first course of human genetics in Cal Tech because in his highly educated university they had not yet had any course of human genetics.

They had a lot of course in fundamental genetics. I was the first professor of fundamental genetics in Cal Tech.

Q As part of your serving on this committee, Doctor, did you have opportunity to go to the Kremlin in moscow and meet with Mr. Brezhnev?

A yes. That is as a geneticist, I was vice-president of the Genetic Congress in Moscow and I was known by my fellow professor of genetics in Moscow and because I am a member o the Pontifical Academy of Science and because I was a member of the, of a special group that we had to study of the dangers of atomic war I was sent by the Pope, John Paul II, to Moscow.

It was around three days after Mr. Jaruzelski had declared the war against people in Poland; in other words, declared a state of war against its own population.

And because we had prepared the reports about the dangers of -- as a specialist I was only speaking of the genetic dangers of the atomic war, then the Holy Father wanted me to be presenting a report to all the powers of the world who were having the atomic power.

And so some of us of the Pontifical Academy of Science went to America to see Mr. Reagan and some came to France or England to China and India. And I was sent by the Holy Father to see Mr. Brezhnev.

And it was a very curious situation. But I am not going to talk too much about that.

Q Dr. LeJeune, you have been credited with the first discovery of the first chromosomal abnormality in man.

Could you please tell the court about your discovery of Down's Syndrome?

A Yes. Down's Syndrome is a very peculiar disease in the sense that the baby who are born with it owe their difficulty to an excess of genetic material.

And it was long ago, nearly thirty years ago that I discovered that they had an extra chromosome and this chromosome is now known as number 21.

The classification of chromosome was not yet established at that moment because it was the first disease to be discovered to be due to this chromosomal defect.

And those babies, in fact, suffer because they have too much of those table of the law of the life which we call chromosomes.

And to make a very complex story short I would say that inside the chromosomes are written in a very special ribbon, which is DNA, all the tricks of the trade to be a human being, if those chromosomes are human chromosomes.

If they are chimpanzee chromosomes, all the tricks to be a chimpanzee are written.

Q Doctor LeJeune, we are trying to qualify you as expert at this point.

A Yes.

Q We will get into that in a minute. I have to cut you off because it's an interesting story. For your discovery of Down's Syndrome did you win any awards?

A Well, I had the honor or receiving the Kennedy Prize from the hands of the late president and, because of this discovery, and got also the William Allen Memorial medal in this country which is the highest prize that you can get in genetics in the world.

It is given by the American Society of Human Genetics in this country. I received it in San Francisco.

Q What year was that, Doctor?

A Oh, I am not good with the remembering the times. It was, if I'm correct, around '62 or '64. I think that the Kennedy Prize was '64.

Q Could you tell the court -

A That's -- I's sorry. I don't remember.

Q Could you tell the Court of any other boards or academies of which you're a member?

MR. BANGIOLA: I am prepared to stipulated the witness as an expert in genetics. Excuse me.

MR. MULLANEY: Your Honor, it is just not that often we get someone with the stature of Dr. LeJeune. But if the Court is willing to recognize him, I offer the Court Dr. LeJeune as expert in genetics and human reproduction.

THE JUDGE: And prosecutor is willing to stipulate that?

MR. BANGIOLA: Without objection.

THE JUDGE: The doctor who discovered Down's Syndrome is an expert in genetics.

MR. BANGIOLA: Doesn't seem like much of a stretch.

THE JUDGE: I will accept that stipulation and welcome you to the Morristown Municipal Court.

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J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF BERNARD NATHANSON, M.D.

Bernard Nathanson, M.D., being of full age, deposes and says:

1. I am a doctor of medicine licensed to practice medicine in the State of New York. I am board certified in obstetrics and gynecology and I maintain my practice at 133 East 80th Street, New York, New York.

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony and some cross examination has been attached to another certification and submitted to the court in this case.

3. My understanding is that this affidavit is being used to support an application by the plaintiff in this case to restrain an abortion of his unborn child. I understand that this certification will be filed in opposition to a motion to vacate the restraints, and that this certification will be used in support of permanent restraints.

4. Current knowledge of modern medicine and its recent developments all support and are consistent with the conclusion that an individual member of the human race, one separate and apart from its mother, has a life immediately following conception.

THE ANATOMY OF THE FEMALE REPRODUCTIVE SYSTEM

5. The uterus, the key organ of the female reproductive system, is a pear shaped organ which has at its lower end the cervix. The cervix is a narrowing which resembles a "bottle neck".

It contains within it a cavity and is positioned above the vagina which is the lower most point of the female reproductive system.

6. At the top of the uterus on both sides are fallopian tubes. They function as a conduit for descending eggs from the mother's ovaries. The ovaries are located above and at the outer limits of the fallopian tubes on both sides. The function of the ovaries are to manufacture, or produce the female eggs or ova. The egg "pops" out of the ovary and is caught by the tube.

7. The fertilization of an egg actually takes place within one of the fallopian tubes itself, in an outer portion of it which is designated the "ampulla".

THE DEVELOPMENT OF THE UNBORN CHILD IN THE FIRST EIGHT DAYS OF LIFE

8. During the first eight days following conception, the unborn child develops additional cells, descends from the fallopian tube, burrows into the lining of the uterus and there is an "interfacing" of the child and mother's circulation.

9. It is while the child is in the early days of life that it (descriptively referred to as "the fertilized egg") begins to "divide" the numbered cells go from one to two, four, then eight and then

sixteen. When the development of the child reaches the sixteenth cell stage, the child is referred to by the biological term "morula".

10. At this stage of development, the unborn child is approximately three days of age and proceeds into the uterus where it continues to divide and develop. By the sixth day, the early human being is actually in contact with the lining of the uterus which is known as the endometrium period as the division progresses and the baby attaches to the uterine wall. The developing human being is within the form of a cell mass referred to as a "blastocyst", which actually is in contact with the uterine wall. At this point there will shortly be a recognizable unborn child and the outer layer of cells, which is referred to as a trophoblast, will form the placenta.

11. As the blastocyst burrows into the lining of the uterus it erodes the maternal blood vessels and nexus begins to form between the mother and the child resulting in an "interface" between the mother's circulatory system and that of the child. It is at this stage of development, eight or nine days of age following fertilization, that the unborn child is detectable within the mother through normal testing methods.

12. It is through the detection of a pregnancy hormone referred to as "beta sub unit HCG" that medical confirmation that there is a growing living human being within the maternal uterus is possible. During the first eight or nine days of the child's development this tiny member of the human race has exhausted its own stored up oxygen and nutrients. So at this age the bridge is established between the unborn baby and the mother and the baby begins to extract the nutrients and oxygen from her. In order to accomplish this link, the trophoblast (the outer layer around the blastocyst) actually scouts into the tissue of the uterus for blood vessels. The trophoblast has the power to open up maternal blood vessels which causes hemorrhaging around the baby. From the blood which is surrounding the child at that point the child begins to extract certain necessary nutrients, chemicals and even oxygen.

THE STAGES OF GROWTH OF THE UNBORN CHILD IS A SEAMLESS CONTINUUM FROM CONCEPTION TO BIRTH

13. The English language is burdened with terms developed at times in the history of medicine when it did not possess the current level of knowledge. Consequently, there are terms to describe the particular "stages of growth". However, it was emphasized at trial that it is important for one to understand that

"stages of growth and development" of the new human being is really a "seamless continuum".

14. Immediately upon conception the "fertilized egg" has been referred to as a zygot. At the age of three days the child has developed from a single cell to a sixteen cell individual termed "morula". The term "embryo" connotes the developing human being from the morulus stage to about the end of the eighth wee . following fertilization. The term "fetus" is used to describe the stage of the development of the human being from the end of the eighth week up to the time that the baby is actually delivered whatever the age of the child at birth.

15. The terms zygot, morula, embryo and fetus are only terms of development of the same human being just the same as the terms "infant", "child", "adolescent" and "adult" also describe different stages of development of the human being. Development of the person from the moment of conception is "seamless" with continuing growth and aging of the person from the moment of conception.

TECHNOLOGICAL DEVELOPMENTS SINCE 1976 (THREE YEARS AFTER ROE V. WADE) HAS RESULTED IN GREATER KNOWLEDGE OF THE NATURE OF THE UNBORN CHILD IN THE EARLY STAGES AND HAS PERMITTED SOPHISTICATED

SURGERY ON CHILDREN ONLY FOUR AND FIVE MONTHS AFTER CONCEPTION.

16. There were crude ultrasound devices that were available in the early 1970's dating back to its development in the 1950's. These instruments permitted limited access to knowledge about the child during the early stages of growth following conception.

17. In 1976 there was a major development in technology called "real time ultrasound". Whereas the old technology showed static pictures, the new technology actually created a motion picture which could detect not only movement but function, breathing, urination, swallowing and other functions of the human existence. It became possible to trace the development of the unborn person from literally the very beginnings (at conception) all the way through the child's development up to its birth. This technology, currently in color, permits detection of such things as blood flow through a fetus and embryo. Doctors using the instrument can actually see the red blood on the screen itself as the vessels transmit the flow of blood through the child's circulation.

18. This level of visualization permits examination and diagnosis of the child's illnesses while in its mother's womb.

Medicine can watch how the child functions including such intricate detail as the operation of the tiny little valves and the heart as it flops up and down pushing blood. Abnormalities in things such as heart valves can be detected and rather sophisticated operations are currently performed on unborn children at the developmental stages of four and five months. It was not until 1990 that the first book was published describing this sophisticated fetal surgery in which the mother is anesthetized, her abdomen surgically opened and the uterus incisioned. In these operations the amniotic fluid is suctioned out and the baby is actually removed from the mother's uterus while he or she is still attached by the umbilical cord. The baby's abdomen or chest (whatever bodily organ is defected) is incised surgically, repaired, and the child is replaced into the mother's uterus, the amniotic fluid put back around the baby, and the mother repaired. The child is able to proceed through the pregnancy to, at or near full term. These operations are done at relatively early stages of development of the child.

19. In addition to the development, since Roe v. Wade, of the sophistication of ultrasound technology, medicine has developed the additional modality of the electronic fetal heart monitor which

permits sophisticated investigation of the fetus. The electronic fetal heart monitor tracks the fetal heart rate from moment to moment and it can detect reactions of the unborn child to such things as different types of music.

THE FUNCTIONING OF THE UNBORN CHILD AT EIGHT WEEKS OF AGE POST CONCEPTION

20. The child at eight weeks is a clearly recognizable human being even to the human eye. The child's brain has formed (the child's brain continues to form following normal birth all through childhood and adolescence). An important fact is that at eight weeks the brain is producing a substance, "substance P", which is the "chemical messenger for pain".

21. The child at the embryonic stage of development has arms, legs, fingers and toes which are separate and distinct. The child has a nose and an external ear and, as Dr. Nathanson put it, the child "is, in fact,...quite obviously one of us".

22. The child, in every way, is a human being that is very small in physiological terms. The child functions the same way that an adult human being functions. The child at that age excretes urine, and its heart beats regularly as it had been since the age of three weeks following conception. The blood is

circulating and brain waves have been isolated and detected for children which are eight weeks following conception. The child essentially does everything that an adult human being does but on a smaller scale.

DEVELOPMENTS IN IMMUNOLOGY DEMONSTRATE THE CHILD IS ALWAYS, THROUGHOUT ITS DEVELOPMENT FROM THE DATE OF CONCEPTION, A SEPARATE AND DISTINCT PERSON FROM THE MOTHER.

23. The pre-born child is always a separate person from the child's mother. Circulations are always separate and they never mix. In fact, if they do mix it can be lethal to the baby and even to the mother. Although the relationship is symbiotic and an important one, the child is a separate and distinct person and is not a part of the mother. This relationship is clearly disclosed by developments in immunology. The white blood cells in the immune system of the mother are capable of recognizing and distinguishing the mother from its non-self, the child. That is the principle reason why the immune system does not kill the organs of the mother. The white blood cells actually recognize parts of the mother as being the same human body to which it is a part. It also distinguishes a body that is not part of itself. If a foreign substance is put into a person's body the white blood cells will

recognize it and immediately attack it in an "attempt to throw it out". The foreign body is not self. When the pregnancy progresses and the blastocyst implants, (when the child is eight or nine days old following conception), chemical messages are sent to various systems in the mother and the immune system (the white blood cells included) galvanizes because it recognizes that there is a foreign body within the mother. A concerted immune attack is focused on the new human being and the objective of the immune system is to expel the foreign body. Each one of us who were unborn babies have undergone this attack. The unborn baby erects a defense against the attack. The trophoblast which constructs the placenta serves as an immunological wall. Graphically it stops the attack. Most human beings survive the attack of the mother's immune system. Those which do not survive are expelled which is the phenomenon that is referred to as "spontaneous miscarriages". A spontaneous miscarriage involves a person who is unborn but fails to survive the attack by the mother's immune system.

ONLY AFTER 1984, ELEVEN YEARS AFTER ROE V. WADE, DID MEDICINE UNDERSTAND THAT THE ABORTION OF THE UNBORN CHILD EVEN AT THE EARLY STAGES OF LIFE WITHIN THE MOTHER'S WOMB (INCLUDING AN EIGHT WEEK

OLD CHILD) INVOLVES A BRUTAL, VIOLENT AND PAINFUL DEATH OF A HUMAN BEING.

24. Mainly as a result of information learned during abortions that were performed after the Supreme Court decision in Roe v. Wade, it is now clear that the abortion of an unborn child, even at the early stages of the child's life following conception, involves a brutal, violent and painful death of a human being. It was not until 1984 that members of the medical profession began to document the abortion experience. In that year, Dr. Bernard Nathanson commissioned a doctor who was performing a legal abortion at a clinic to perform the abortion under ultrasound with the modern technology then available. During one day's work the commissioned doctor taped the ultrasound abortions of twenty-five to thirty human beings. A vivid depiction of one of the abortions was incorporated into a film entitled "The Silent Scream". As a result of the use of this technology in the taping of the abortion it is documented that the unborn child is moving around in the womb in the embryonic fluid. We now know from this technology that the unborn child begins to move within the embryonic fluid at the age of eight weeks.

25. In the abortion process the doctor puts an instrument into the womb to dilate the cervix. The doctor breaks the water and the embryonic fluid is permitted to flow out. Then the doctor uses a suction apparatus into the uterus. On the film it can be seen that the baby moves away from the suction apparatus. After the baby moves from the apparatus, the suction is turned on and a tremendous negative force is used to pull the baby from its living quarters.

26. In the suctioning process, the arms and legs of the human being are being torn off and then subsequently the body is being ripped apart.

27. In this specific abortion filmed in 1984, the head of the baby was too large to be suctioned out so the doctor had to take a metal instrument called a polyp forcep to reach into the uterus to locate the baby's head and put the forcep around the baby's head and then close the forceps. The film reveals that the child's head is actually crushed in the process. It was not until 1984 that there was a reliable documentation of what actually occurs in abortion.

28. I performed or supervised seventy-five thousand abortions. These abortions were performed when this technology was not

available (before 1972). During an abortion a human being's life is terminated.

29. It is now clear that as a matter of fact, the abortion of an unborn child in its mother's womb subjects a human being to "unimaginable agony" and it ends the life of a person in the most barbaric and bloody manner possible.

30. The unborn child's death and the pain to which it is subjected is documented in the movie "The Silent Scream". In the film it can be seen that the mouth of the young unborn baby is open. It is a dramatic, an arresting moment - a heart stopping moment - because it can be detected that the child was grimacing and was evidencing the most unimaginable agony that one can envision.

31. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Bernard Nathanson
BERNARD NATHANSON, M.D.

DATED:

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J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF BERNARD NATHANSON, M.D.

Bernard Nathanson, M.D., being of full age, deposes and says:

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2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony is attached to this certification.

3. I incorporate by reference the testimony I gave in the matter of State v. Loce in this certification. I understand that this certification is being submitted in the New Jersey Courts in a law suit entitled J.M. v. V.C., W.M.C., et al., currently pending in the Superior Court of New Jersey, Chancery Division, before The Honorable Patrick J. McGann, J.S.C. I understand that this case is a civil action brought by the father of an unborn child seeking to enjoin an abortion. It is to be made part of the record on an Order to Show Cause and in Opposition to a Motion to Vacate the Restraints, and in support of an application for a permanent injunction.

4. I certify to Judge McGann and the New Jersey Courts that the testimony that I gave in the matter of State of New Jersey v. Alexander Loce, et al., which is attached to this certification, is truthful and accurate and I incorporate it by reference.

5. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Bernard Nathanson
BERNARD NATHANSON, M.D.

DATED:

BERNARD NATHANSON, M.D.

having been duly sworn according to law, testified as follows:

THE JUDGE: With respect to the speaking and movement in my courtroom, this is a court of law. It looks like someone's den with the fireplace, but it is a court of law.

I expect silence so we can hear the testimony, the direct examination and cross-examination.

All right, you may begin, counsel.

DIRECT EXAMINATION OF MR. TRAYNOR:

Q Doctor Nathanson, please state your full name and your address.

A Bernard N. Nathanson, M.D., 133 East 80th Street, New York, City.

Q And, Doctor, where are you licensed to practice medicine?

A In New York and Pennsylvania.

Q What is your educational background?

A I was educated at Cornell University. I then went to the McGill University Medical College in Montreal, Canada.

Q What degree did you receive from Cornell University?

A I did not receive a degree. It was pre-medical education. I received a degree of M.D. at McGill in 1949.

Q And did you do any post-graduate medical training?

A Yes I did. I had a year as a rotating intern at the Michael Reece Hospital in Chicago, a years as an assistant resident in surgery at the New York Hospital Cornell Medical Center; four years of residency in obstetrics and gynecology at the Woman's Hospital in New York City.

That residency was interrupted by two years of service in the U.S. Air Force, during which time I was chief of obstetrics and gynecology in the Northest Air Command.

And after this rather lengthy period of training and service, I entered the private practice of obstetrics and gynecology in New York City at the end of 1957, substantially older than I was when I started.

Q Doctor, what is your specialty?

A Obstetrics and gynecology.

Q Doctor, do you have a board certification?

A I do.

Q What is that?

A I was certified by the American Board of Obstetrics and Gynecology in April 1960.

Q Do you have any hospital affiliations?

A I do.

Q And those are?

A I am senior attending obstetrician and gynecologist at the Saint Vincent's Hospital Center which is part of the New York Medical College.

I am senior obstetrician and gynecologist at the St. Luke's Roosevelt Hospital, which is part of Columbia University College of Physicians and Surgeons.

I'm associate attending obstetrician and gynecologist at the New York Hospital Cornell Medical Center.

And I was chief of the obstetrical service at the St. Lukes' Hospital for a period of five, for or five years, from 1973 until the end of 1977.

Q Do you have any professional associations?

A I do.

I am a member of the American Medical Association, the New York State and County Medical Societies.

I am a fellow of the American College of Surgeons.

I am a fellow of the American College of Obstetricians and Gynecologists; and a very lengthy list of really quite minor, other organizations.

Q Have you published any writings in your field?

A Yes, I have.

Q Could you give us some of those?

A I published, I believe, 15 or 16 scientific articles, several books, and assorted other material in the area of bio-ethics especially.

Q Have you published in the area of fetal development and embryology and fetology?

A Yes, I have, and I have also lectured on this in respect to my academic appointments.

Q Have you received any awards or honors in your field?

A Well, yes. I have been appointed assistant or clinical assistant professor of obstetrics and gynecology at the Cornell University Medical College which I currently hold.

I also hold a professorship at the New York Medical College where I am clinical associate professor of obstetrics and gynecology.

So I have professorships at two universities.

MR. TRAYNOR: I offer the doctor as an expert witness in the field of obstetrics and gynecology.

THE JUDGE: Any objection?

MR. BANGIOLA: No objection.

THE JUDGE: All right, the doctor will be accepted as an expert in obstetrics and gynecology.

You may proceed.

BY MR. TRAYNOR:

Q Doctor, in addition to indicating your training in your chosen field, do you have any training in abortion procedures and any practice, any experience in that practice?

A Yes, I have -- and I say this immodestly, but I probably have more experience in the area of abortion and abortion technology than perhaps anyone in this country, owing to the fact that I was the director of the largest abortion clinic in the United States for a period of two years; and published early on in the medical literature, scientific papers on techniques of abortion, ambulatory abortion technology, complications of abortion, and a whole range of issues dealing with abortion and satellite issues.

Q Thank you, Doctor.

Doctor, would you describe the anatomy of the female reproductive system?

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J M , individually as guardian ad litem of his unborn child Plaintiff, vs. VC; WMC; JOSEPH BLOW RICHARD ROE, fictitious names of real individuals who are employees and agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. CIVIL ACTION ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS

THIS MATTER having been opened to the Court by Cassidy, Foss & San Filippo, Harold J. Cassidy, Esq., appearing, and Patrick J. Mullaney, Esq., attorneys for the Plaintiff, and the Court having reviewed the Plaintiff's Verified Complaint, the Certifications, the sworn testimony presented, Plaintiff's Brief and the arguments of Plaintiff's counsel; and the Court having determined for good cause

showing that: (1) it clearly appears from the specific facts shown by the sworn testimony and the Verified Complaint that the Plaintiff is the unwed natural father of an unborn child; that the Defendant, V C is the unwed mother of that unborn child; that the Defendant has been pregnant for approximately eight weeks; that the Defendant V C intends to abort her pregnancy without the consent of the natural father on or about March 11, 1992; that the Plaintiff, the natural father opposes the abortion of the unborn child and wishes to raise and support the child; that the Plaintiff wishes to assert his rights as the natural parent of the child; that the Plaintiff, as the natural parent, wishes to assert the rights of the unborn child; and therefore, that immediate and irreparable harm will result to the Plaintiff; (2) Plaintiff has demonstrated a substantial likelihood of success on the merits; (3) Plaintiff has demonstrated that any harm to the Defendants resulting from the imposition of the temporary restraints requested by Plaintiff is outweighed by the harm which would result to the Plaintiff if such restraints were not imposed; and (4) the imposition of the temporary restraints against the Defendants does not contravene the public interest;

IT IS on this ____ day of March, 1992 at ___ A.M.

ORDERED that Plaintiff's application for a temporary restraining order shall be and hereby is granted as follows:

A. Defendant V C is hereby prohibited and enjoined from accepting or requesting any service, any surgical or medical procedure, ingesting drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of her pregnancy or which will otherwise, directly or indirectly, result in the termination of her pregnancy;

B. Defendant WMC , Howell, New Jersey is hereby prohibited and enjoined from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C;

C. Each and every director, officer, employee, agent and/or representative of Defendant WMC , New Jersey is hereby prohibited and enjoined from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C

or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C;

IT IS FURTHER ORDERED that on forty-eight (48) hours' notice to Plaintiff's counsel, Defendants may appear and move the dissolution or modification of this Order; and

IT IS FURTHER ORDERED that the restraints imposed by this Order shall expire on the day of 1992 at 12:00 P.M., unless extended by further order of this Court; and

IT IS FURTHER ORDERED that the defendants are enjoined from disclosing, directly or indirectly, the identity of the plaintiff, John Doe, and the true identity of Jane Roe, and Ordered to take all reasonably precautions to prevent an inadvertent disclosure of them; and

IT IS FURTHER ORDERED that V C is enjoined from leaving the State of New Jersey for the purpose of terminating the life of her unborn child; and

IT IS FURTHER ORDERED that the Defendants or their attorneys show cause before this Court at the Superior Court of New Jersey at the Monmouth County Court House in Freehold, New Jersey, on March __, 1992, at __ o'clock P.M., why an Order should not be entered:

A. Permanently prohibiting and enjoining Defendant VC from accepting or requesting any service, any surgical or medical procedure, ingesting drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of her pregnancy or which will otherwise, directly or indirectly, result in the termination of her pregnancy;

B. Permanently prohibiting and enjoining Defendant WMC , New Jersey from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C;

C. Permanently prohibiting and enjoining each and every director, officer, employee, agent and/or representative of Defendant WMC , New Jersey from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C; and

IT IS FURTHER ORDERED that this order shall not be disclosed or revealed to anyone other than defendants counsel where the names of the parties are visible or revealed; and

IT IS FURTHER ORDERED that Defendants file an Answer to the Plaintiff's Complaint, and submit any briefs and/or certifications or affidavits in opposition to the above relief, not later than March __, 1992, and that Plaintiff submit any reply briefs and/or certifications or affidavits not later than March __, 1992.

/s/ Patrick J. McGann, Jr.
J.S.C.

ORDER ON EMERGENT APPLICATION

JOHN DOE, a fictitious name of a real person, individually; JOHN DOE a fictitious name of a real person, guardian ad litem for his unborn infant child

vs.

JANE ROE, a fictitious name of a real person, et al.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.
MOTION NO.
BEFORE PART: E
JUDGES: SHEBELL
SKILLMAN
D'ANNUNZIO

EMERGENT APPLICATION FILED: March 13, 1992 BY: Cassidy, Foss & San Filippo AND Patrick J. Mullaney, Esq.

ANSWER(S) FILED: BY:
BY:

APPEARANCE ONLY: BY: Harold J. Cassidy, Esq.

DATE ARGUED: March 13, 1992

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 13th DAY OF MARCH, 1992, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR LEAVE TO APPEAL AND TO PROCEED WITH FICTITIOUS NAMES	GRANTED	DENIED	OTHER
	X		X

SUPPLEMENTAL: The parties to this action, their representatives, and the court shall use the initials of the parties and not their full names or other means of identity. The real names of the parties shall be maintained as a sealed record of the court. The order of the Chancery Division dated March 9,1992 is hereby summarily reversed.

FOR THE COURT:
/s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR., J.A.D.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-66-92

J.M., individually and as guardian ad litem of his unborn unborn child
Plaintiff,

vs.

V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation

Defendants.

TRANSCRIPT OF

ORDER TO SHOW CAUSE

DATE: March 19, 1992
PLACE: Freehold, New Jersey

B E F O R E:

THE HONORABLE PATRICK J. McGANN JR., J.S.C.

APPEARANCES:

Harold J. Cassidy, Esq. (Cassidy, Foss & San Filippo) and
Patrick J. Mullaney, Esq.
Attorneys for the Plaintiff J.M.

Lewis H. Robertson, Esq. (Evans, Osborne & Kreizman)
Attorneys for the Defendant V.C.

JAMES V. OVERBY, C.S.R.
OFFICIAL COURT REPORTER
MONMOUTH COUNTY COURT

HOUSE

FREEHOLD, N.J. 07728
LICENSE #XI00692

father's rights because the child would have a right to live on is own.

THE COURT: I don't know whether again we're doing a little bit of a dance here just to have him sit around and make him feel good.

I've already indicated that somebody is going to be a guardian ad litem. It doesn't make any difference to me if he is because who is going to be the somebody it's the lawyer that's going to do the work.

MR. MULLANEY: Thank you, your Honor.

THE COURT: Let's get to Mr. Robertson.

MR. ROBERTSON: As I understand, the court wishes me to address the father.

THE COURT: Just the father individually.

MR. ROBERTSON: I'll be very brief and very summary. First of all, of course we're in a trial court bound by applicable precedent.

Secondly, it's dangerous to divorce holdings from their facts because the facts give rise to the policies that were considered in order to lead to the holdings and all the cases that

were cited for the proposition that the father has a right because of companionship, his right of procreation, his right to discharge his duty to his child and perhaps an Article I right.

The courts were dealing with a personal being and here there is no personal being. And I think that a totally different consideration would operate were a court in proper circumstances to analyze the father's standing.

I suggest that thee has been no case cited in any jurisdiction at least in an appellate court where a father in circumstances such as these has ever been held to have standing.

And for those reasons again, in summary fashion, the father has no standing.

THE COURT: I'll grant the motion to dismiss J.M. as a party plaintiff and I'm satisfied that that's the proper thing to do. All of the cases in which the issue has arisen in the past have been husband type cases and those cases, of course, have an additional element to them and that is, in a sense the contractual agreement between husband and wife in which we're partners in this whole idea of marriage, whole idea of procreation and because I'm your

partner, I have something to say about what occurs during our marriage.

Even in those cases, husbands have not be afforded standing. This is one step removed from that and aside form the genetic connection and aside from the fact he's interested as a person because of the relationship that he had with the person who now bears the unborn, that's not any sort of a constitutional basis.

The constitutional rights alleged in his behalf or as Mr. Robertson says, rights that courts have talked about in connection with children who are available, my expression, for hugging. That's the context in which those cases went forward and not in this context at all.

So I will grant the motion to dismiss J.M. as an individual plaintiff.

The second argument, I think is Mr. Robertson's to carry because he thinks the whole complaint ought to be dismissed.

MR. ROBERTSON: Thank you. I'd like to again point out to the court that the circumstances presented here ar relatively simple and I think the issue is relatively simple too. We have an unmarried woman in her first trimester of pregnancy.

She's elected to have an abortion. She doesn't seek to have the state pay for it. She doesn't seek to have the state provide the facilities in which the abortion is to take place.

There is no state Statute which prohibits it. There is no decision, at least of a New Jersey Supreme Court, that is the Supreme Court or an appellate court that has construed the New Jersey Constitution as prohibiting it in circumstances such as these.

All that stands in her way at this point is there

precedent and there is no precedent for the proposition that a fetus is protected by the 14th amendment.

But there are cases which hold to the contrary. Any my point is simply that we must apply those precedence and that should lead to dismissal of the complaint and dissolution of these restraints.

THE COURT: It seems to me that the judicial resolution aside from all of the arguments is the resolution that should be designated on the return date of an order to show cause as to whether or not certain temporary restraints should be continued as an injunctive order.

The injunctive order is effectively to V.C. don't abort that, I'll say fetus because that's a neutral term. Should that injunction continue to remain in place.

That depends on whether or not we have a lawsuit because if I do not appoint a guardian ad litem or say to J.M. that while you designate yourself guardian ad litem of the unborn, that's not real.

If I don't do that, then we have no case and if we have no case we have no injunction. It's true that the U.S. Supreme Court has not ruled on the issue at least in Roe v. Wade, it doesn't.

It specifically left the field open. It decided not to get involved in the field and the language that it used, maybe it's language that now some nineteen years later, it's easier to question it but when you read the language, it doesn't sound terribly judicial.

"We need not resolve the difficult question of when life begins." Well, if you say that, then you never get into the question of personhood and you never get into the question of constitutional protection.

Whatever life is there in V.C., right there, if it is life, whatever is there in V.C. if the normal nine month term comes to pass and if there is no abortion involved, voluntary abortion in the meanwhile, miscarriage, a baby will be born, male or female and get a name.

And from then on be known as Mary Jones. We don't apply the name Mary Jones to what is becoming Mary Jones, we say only when the birth process take place, only when he slaps the baby's bottom, cut the umbilical cord, then Mary Jones is okay.

Arguments that are presented by way of the affidavit submitted by Drs. LeJeune and Nathanson say that it's Mary Jones right from the moment of conception. It doesn't have a name; but from the time of birth it's going to be Mary Jones from the time it dies and birth is just one intervening step almost like going to high school, maybe, during lifetime. It's a step along the way of life.

Now, that's what they say. And on a reading by an unlettered person in the medical field such as myself and I'm not deprecating, that's the truth, on the reading what they say and according to their expertise which I don't have, they say life is life.

That it begins the moment of conception and goes on until death is declared. Now, we have spent a great deal of time in figuring out when people are dead. We find that the legislature passes an act which defines when death occurs.

The legislature hasn't passed an act defining when life occurs. But the fact that we address the problem, legislature having on one end a lot of court cases which had to do with defining when death occurred too where the legislature acted, which is not something unusual that courts have to act first.

But we have spend a lot of time on that, w in this state, and I think most states do claim we are protective of life and we

are. I think in the cases with the children in the hospital, children of Jehovah's witnesses, child need blood transfusion, simple thing.

Parents say no, we can't do that, against our religion. The courts say you keep your religious beliefs, we're interested in the child's rights. Child gets a transfusion.

There are cases which have said, for example, where a mother is still carrying he infant in her womb, refuse medical treatment which will be deleterious to the child in the wound, there are orders that have been entered that say you've got to take that treatment even if it's against your religious beliefs because it affects the unborn. And we're there to preserve life.

The entire argument, and it's an excruciating argument over the death penalty and is an argument in favor of life. The reason the Supreme Court is going through all of the gyrations, and I don't have any quarrel with what they are doing, because they say we don't want to be the cause of somebody's death because we support life. That's the principle.

So with all of that and with the affidavit in front of me, the I fall back to those guiding principles which have to do with injunctive orders issued by judges at the outset of litigation.

And I've said here on the record many times, the first principle for any judge who is asked to put an injunction in place at the outset of litigation, the first principle is don't do it. That's first. Because you haven't had a compete hearing and an injunctive relief usually is plenary relief.

At the end of the case somebody wins and somebody loses. And the judge says you're enjoined from doing that permanently. You're finished. That is the general principle; but there are exceptions and the exceptions are very clear and the principles are well known.

If you have to enjoin in the beginning of a case, do so only to prevent immediate and irreparable harm and injury. Now, you say as far as the unborn, that's in the womb of V.C. if I don't enjoin there will never be a possibility of birth and there will never be a possibility of personhood beyond the birth period as the constitution would protect.

So harm in the sense of the unborn is irreparable. Now, maybe the process of nature will mean that that child will never be born. Maybe there will be a miscarriage some place along the line. That's something we're not talking about. We're talking about

doing something affirmative and active to prevent a natural development.

The questions is, is that a development of life and the affidavit say positively if it's so, if what Dr. LeJeune says is so, then at the moment of conception all of the full blown characteristics of that individual when the individual is ultimately born and grows and comes to the peak of its abilities, physical abilities, all of that is decided at the very moment of conception.

His analysis of DNA and comparison of the tapes and signals and things like that is fascinating and maybe a complete hoax on his part. Other people may not agree with it but it really is very interesting thing to read.

And he says that's when it starts and the whole future is predicted except if it's hit by a bus or gets killed, there is an accident or falls off a cliff.

But the whole process of mental growth, the facial features, the color of hair, all of that is right there in that moment of conception. If you say that and if it is so, then you say to yourself there is something protectable there. At least whatever is there should have a right to a hearing to determine whether it is life.

Whether LeJeune is right or wrong, whether Nathanson is right or wrong, but with those affidavits it looks like if I go have the abortion, irreparable harm as to whatever is there.

SO the first standard is met, so to speak, for our purposes today. The second is a standard even if there is perceptible irreparable harm don't do it, judge, unless you find there is a probability of ultimate success.

Now in the ordinary run of the mill chancery cases, I have said that calls upon the chancery judge to exercise an educated hunch as to what is likely to occur. And the exercise of that judgment, that discretion is left to a veteran chancery judge y appellate courts.

And they say he's had experience along the line. He has a feel for cases like this; and, therefore we'll leave the first decision up to that judge, him or her to decide whether he thinks or she thinks there is a possibility of ultimate success.

It involves some judicial crystal ball gazing but against the background of experience and a knowledge of people perhaps and a knowledge of the law.

So I do it and every other chancery judge does it, hunching through to a probability of ultimate success. In some

cases it's clear. In other cases it's not clear. And in those cases injunctions are granted.

In some cases it's clear there will never be a probability of ultimate success so don't grant the injunction. And then the third standard if you find the first two exists, then still before you impose the injunction, sit back and thing of the consequences of what you do.

What happens to the one person if you impose the injunctive order. What happens to the other one. And I use person now just in a legal since, not definitive here. What happens to the other person if you don't' impose the injunctive order.

Those opinions and those principles apply here. So the irreparable harm arguably is there and on the papers before me certainly is there because they say from moment of conception all the way along. So irreparable harm to what is there, I think, is quite clear.

Now, the probability of ultimate success. That's a mixed question. It's a mixed question of fact and law because I keep saying what is there. I keep saying based upon what is before me and that's a one-sided presentation, I recognize.

Now are there equally qualified experts who will come in and say LeJeune is wrong. Nathanson is wrong. That's not the way it works. That's not the biology of it. What's the word I'm looking for, the embryology of it.

I think that LeJeune is an embryologist. And I will have to listen and say LeJeune looks pretty good on paper. When he comes here, he doesn't turn out to be so hot or Nathanson looks pretty good on paper, but when he comes to testify, he doesn't stand up against the others who are more qualified, more expert and more involved in deciding this business of when does life begin.

But I do know that the U.S. Supreme Court has never done that. I do know that the New Jersey Supreme Court has never done that. Neither of those courts has had a record which is made in a trial court in a judicial fashion in which the judge evaluates qualifications.

A judge evaluates the worth of testimony and a judge makes a call one way or the other. The judge can't sit and say we need not resolve the difficult question of when life begins. A trial Judge can't do that. The issue is there. The trial judge has to one

way or the other resolved it. He could back off the field and say gee, I don't know fellows.

That's what trial judges are. So our Supreme Court in Right to Choose v. Byrne states at page 299 of the opinion in 91 N.J. Reports, "We do not presume to answer the profound questions about the morale, medical and societal implications of abortions nor do we undertake to determine when life begins or at what point fetus is a person."

They backed off because there was no factual record at all before them. That was the question of funding abortions and there was no record before them at all as to whether the question of when life begins or when a fetus becomes a person but that record had to be made. It can't be made unless there is a litigated case.

Now, in this case the question is, is there a probability of ultimate success and I am frank to say I don't know the answer to that.

The unborn has to prove, through its guardian ad litem, that it has life. It has to prove, through its guardian ad litem, at what point a court can say that life is equated with a person because there may be a difference between the two, I don't know.

But the irreparable harm is so overwhelming if the fetus is ultimately able to say yes there is life or the court can say yes there is a life, yes there is a person, to say I'll never give it chance by allowing the abortion means the issue can never be reached and the answer can never be given and then reviewed by an appellate court one way or the other.

So if I don't we it to the unborn here, I owe it to people who constantly ask this question to start and make a record and to start the process where somewhere, some day the definitive answer may be given.

So for that reason even though the probability of ultimate success is either way, the scales are balanced, if you wish, the irreparability of the harm is so strong. And then we get to the balancing issue.

Now, I'm not passing over that quickly because during the time we're making a nice record here that fetus is growing in V.C. And she may be getting more anxious and it maybe creating medical difficulties. You know, I am aware to that possibility too and certainly an application is always open to come back to me and say you know release the injunction because we got a problem here.

An argument can be made when we get back here to the hearing and we'll talk about when he get back here, an argument can be made when we get back here, judge, at some point in time no matter how nice the question is and how interested in all the lawyers and folks are that we're talking about, V.C. we've got look at her and her interests too and she does have interests.

So for our purpose today I will continue the injunctive order which I previously entered as a temporary restraint and I think, as I've said, there is a basis for doing that. That was never don in Roe v. Wade.

There was never a guardian ad litem. Keep coming back to the point where nobody has ever really made the record. There is also the argument that has been touched upon in the briefs and that is the question or personhood and when the label sticks so that it becomes constitutional and protectable is something that may vary between the U.S. Constitution and the New Jersey Constitution.

You know our courts have said many times that while we all give deference to the United States Constitution because it is the law of the land, there is no prohibition in that constitution from the states acting under their constitution giving it more expanded

rights perhaps than the U.S. Constitution and our state has not been slow to do that either. So there is that argument.

So that I am willing to undertake the fact finding issue as to the -- what I don't know, that is what is life, when life begins and the legal issue that turns upon those facts as to when personhood arguably attaches so that constitutional rights are created.

But at the very least when we talk about the unborn, we can talk about a potential life and we can talk about a potential person because unless the process is interrupted that's what would happen.

So that potentiality is protectable by the injunctive order until we can determine whether we can drop, as I've said, the adjective or not.

So we'll continue the injunctive order. Now, the big thing is keeping V.C. in mind, when can we have a factual hearing and we need an answer on behalf of V.C.

MR. ROBERTSON: I understand.

THE COURT: And I can take it -- may I just digress. The clinic which is restrained doesn't appear because they say whatever the Judge says we'll do.

MR. CASSIDY: The lawyers for the clinic advised me that thy have no intention of appearing because they are only being restrained with respect to this one particular individual and so they have know intention of being heard. They'll not file an Answer.

THE COURT: They'll do whatever the judge says.

MR. CASSIDY: Of course, we would want the injunction against them.

THE COURT: And to continue and I will for that purpose.

MR. CASSIDY: In fact -- no, I want to ask for them --

THE COURT: Leave it the way it is because that's sufficient. But timing?

MR. ROBERTSON: Your Honor, I'm in somewhat of an unusual position. I served in a sense as a first line of defense for V.C. and although I may participate in emergent application to the appellate division from this court's order today, that probably will be the extent of my participation. I'll be substituted by other counsel and --

THE COURT: You'll have to rally the troops kind of.

MR. ROBERTSON: So to speak. And I would ask I be allowed to defer giving the court an answer as to when an answer can be filed and when a hearing can be held.

I will put other counsel in contact with Mr. Cassidy as well as the court as soon as I can.

THE COURT: I recognize Mr. Cassidy has backing for his position and I'm sure that V.C. will have backing for her position now that people know it's going to be a fact finding hearing.

MR. ROBERTSON: I'm sure that will be the case.

THE COURT: All right, prepare the order any way so I can sign it and the interlocutory appeal can go forward.

MR. CASSIDY: Should we at least set a conference date so we can talk about streamlining the hearing?

THE COURT: I have to confer with the somebody. I hear it said Mr. Robertson will now be contacting the somebody and letting us know as soon as you can who the lawyer to whom we're supposed to direct --

MR. ROBERTSON: Your Honor, I did submit a form of order with my notice of motion and I phrased it such it would be used either grant or deny the relief question. I'd like to leave with a copy of the filed Order.

THE COURT: I can enter it.

MR. CASSIDY: While your Honor is at it, may I ask your Honor to certify the portion of Your Honor's ruling that was

adverse to my client. Could you certify that interlocutory order is final.

THE COURT: Why don't you just cross appeal. There is a notice of appeal from this order and then cross appeal as to that. Certifying things as final gets trial judges into big trouble with appellate judges sometimes. So I would much rather you simply cross appeal.

Only thing that's not covered in the order is that which Mr. Cassidy would like to cross appeal on and that is the dismissal of J. M. as an individual party. Why don't you give me an order.

MR. CASSIDY: Is it possible for you to just write plaintiff individually dismissed so that we have one order to deal with? I would appreciate it, Judge.

THE COURT: Further ordered the plaintiff's complaint shall not be dismissed, however, J.M. as an individual does not have standing to prosecute the action. Good enough?

MR. CASSIDY: Okay, then I would ask you to specifically appoint him as guardian ad litem to prosecute on the action on behalf of the infant.

THE COURT: In can only write so much. I will do that. I said I would probably do it. I'll say now that effectively the caption is going to read J.M. as guardian ad litem.

MR. CASSIDY: I'll submit a separate order.

THE COURT: If you want to clean it up and make it look nicer, that's okay.

Thank you for being here and arguing and doing all the briefs you've done in the short time. Interesting.

- CERTIFICATE -

I, JAMES W. OVERBY, do hereby certify that the foregoing is a true and accurate transcript of the within proceeding, as taken by me stenographically on the date and place hereinbefore set forth.

/s/ James W. Overby
JAMES W. OVERBY, C.S.R.
Official Court Reporter

DATE: March 23, 1992

EVANS, OSBORNE & KREIZMAN
180 White Road
Little Silver, NJ 07739
(908) 741-9550
Attorneys for Defendant V.C.
pl\vc.2

J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 <u>CIVIL ACTION</u> ORDER

This matter having been opened to the Court by Evans, Osborne & Kreizman, attorneys for Defendant V.C., Lewis H. Robertson, Esq. appearing, on notice to Cassidy, Foss & San Filippo, attorneys for Plaintiff J.M., Harold J. Cassidy, Esq. appearing, and the Court having considered the moving papers and

any response and reply thereto and argument of counsel, and it appearing to the Court that certain relief is warranted; it is on this 19th day of March, 1992,

ORDERED that the restraints heretofore entered by this Court's Order of March 9, 1992, shall be and are herewith continued; and it is further

ORDERED that the Plaintiff's Complaint shall not be dismissed however, J.M. as an individual does not have standing to prosecute the action.

/s/ Patrick J. McGann, Jr.
PATRICK J. MCGANN, J.S.C., P.J.Ch.

ORDER ON EMERGENT APPLICATION

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent, Cross-Appellant,

vs.

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of defendant corporation

Defendant-Appellants, Cross-Respondents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-742-91T5
MOTION NO. M-3884-91
M-3886-91
BEFORE PART: E
JUDGES: SHEBELL
SKILLMAN
D'ANNUNZIO

EMERGENT APPLICATION FILED: 3/20/92 BY: Lewis H. Robertson (Evans, Osborne & Kreizman) for defendant)

ANSWER(S) FILED: BY: Harold J. Cassidy (Cassidy, Foss & San Filippo) and Patrick J. Mullaney for Plaintiff

BY:

APPEARANCE ONLY: BY:

DATE ARGUED: 3/23/92

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 23rd DAY OF MARCH, 1992, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR LEAVE TO APPEAL FROM TRIAL COURT'S ORDER OF MARCH 19, 1992 CONTINUING

RESTRAINTS HERETOFORE ENTERED AND DENYING DEFENDANTS' APPLICATION FOR DISMISSAL OF COMPLAINT	GRANTED	DENIED	OTHER
	X	X	X

SUPPLEMENTAL:

We grant the motion of defendant, V.C., for leave to appeal solely with respect to the part of the trial court's order of March 19, 1992, which continues the restraints contained in the trial court's order signed on March 7, 1992 and entered on March 9, 1992. Pursuant to R. 2:11-2, we elect to consider the merits of the appeal. We summarily reverse the part of the trial court's order of March 19, 1992 continuing restraints and vacate paragraphs (A), (B) and (C) of the court's order of March 7, 1992 as well as the further paragraph of that order which prohibits V.C. from leaving the State of New Jersey for the purpose of terminating her pregnancy. We are satisfied that the restraints granted by the trial court are clearly unjustified in view of Roe v. Wade, 410 U.S. 113, 35 L.Ed. 2d 147 (1973), Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 49 L.Ed. 2d 788 (1976) and Right to Choose v. Byrne, 91 N.J. 287 (1982).

Plaintiff having represented to this court that he would make an immediate application for emergent relief to the Supreme Court of New Jersey if the restraints granted by the trial court were dissolved and having requested a brief stay of the dissolution of the restraints issued by the trial court until 4 p.m. on March 24, 1992.

We deny defendant's motion for leave to appeal from the part of the trial court's order denying her motion to dismiss the complaint.

Except for the part of this order which denies defendant's motion for leave to appeal from the trial court's denial of her motion to dismiss the complaint, Judge Shebell dissents for the reasons expressed in his attached opinion.

FOR THE COURT:
/s/ Stephen Skillman
STEPHEN SKILLMAN, J.A.D.

ORDER ON EMERGENT APPLICATION

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent,
Cross-Appellant,

vs.

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of defendant corporation

Defendant-Appellants,
Cross-Respondents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-742-91T5
MOTION NO. M-3884-91
M-3886-91
BEFORE PART: E
JUDGES: SHEBELL
SKILLMAN
D'ANNUNZIO

EMERGENT APPLICATION FILED: 3/20/92 BY: Lewis H. Robertson (Evans, Osborne & Kreizman) for defendant)

ANSWER(S) FILED: BY: Harold J. Cassidy (Cassidy, Foss & San Filippo) and Patrick J. Mullaney for Plaintiff

BY:

APPEARANCE ONLY: BY:

DATE ARGUED: 3/23/92

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 23rd DAY OF MARCH, 1992, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR LEAVE TO CROSS APPEAL FROM THAT PORTION OF THE COURT'S ORDER OF MARCH 19, 1992

WHICH DISMISSES PLAINTIFF'S COMPLAINT BROUGHT IN HIS INDIVIDUAL CAPACITY

GRANTED	DENIED	OTHER
	X	

SUPPLEMENTAL:

Judge Shebell dissents from this order for the reasons expressed in his attached opinion.

FOR THE COURT:

/s/ Stephen Skillman
STEPHEN SKILLMAN, J.A.D.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
AM-742-91T5
M-3884-91
M-3886-91

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent,
Cross-Appellant,

vs.

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of defendant corporation

Defendant-Appellants,
Cross-Respondents

SHEBELL, J.A.D., dissenting.

I cannot agree with the majority that emergent relief is appropriate and that the restraints imposed by the trial judge should be removed. The law pertaining to abortion is in a state of flux. See Webster v. Reproductive Health Servs., 492 U.S. 490, 106 L.Ed.2d 410 (1989); Planned Parenthood of S.E. Pa. v. Casey,

947 F.2d 682, 695, 698 (3d Cir. 1991). The United States Supreme Court's holding in Roe v. Wade, 410 U.S. 113, 35 L. Ed.2d 147 (1973) in the view of many represents an erroneous interpretation of the Constitution-inventing a constitutional right to an abortion, now exclusively in the mother, where none previously existed or could even have been contemplated by our founding fathers.

This court should not at this time rush to judgment. In this case, one of the recognized parents cries out for the right to "preserve" and thereafter "nurture" the child which the other seeks to irretrievably put beyond the reach of all courts. Cf. Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 49 L.Ed.2d 788 (1976).

The courts or our Legislature, if given the opportunity, perhaps even because of this very case, may recognize an unborn child's right to life, or at least, the right of both parents to be heard on the issue. I would, therefore, continue the restraints wisely imposed by the trial judge. There is no other way the issue can be preserved in this case. Should the action of any court be less than to protect the subject matter of the controversy presented to it?

Further, I would grant leave on the cross-appeal of the natural father individually, and I would summarily reverse and remand so that all of the relevant issues may be reviewed on a complete record.

J.M., Individually and as
guardian ad litem of his
unborn child,

Plaintiff-Respondent,

v.

V.C., a fictitious name of a real
individual;

Defendant-Movant,

and

W.M.C., a fictitious
name of a real corporation;
JOSEPH BLOW and RICHARD ROE,
et al.,

Defendants.

This matter having been duly presented to the Court, and the Court having determined that plaintiff has failed to demonstrate a reasonable likelihood of prevailing on the merits of his complaint, and the Court having concluded that under current law, plaintiff's proffer of proofs would not realistically assist or inform the court in its determination of the legal issues properly before it;

And good cause appearing;

It is ORDERED that the motion for leave to appeal the denial of defendant's application to dismiss the complaint of J.M. as guardian ad litem (M-969) is granted; and it is further

ORDERED that leave to appeal having been granted, the motion for a summary reversal of the trial court's order (M-970) is granted, and the complaint is dismissed; and it is further

ORDERED that the motion to vacate the temporary stay of the Appellate Division(M-971) is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-961/2/3/5/6/7/8 September Term 1990

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent,

v. ORDER

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, et al.,

Defendants-Respondents

This matter having been duly presented to the Court, and the Court having determined that plaintiff has failed to demonstrate a reasonable likelihood of prevailing on the merits of his complaint,

And good cause appearing;

It is ORDERED that the motion for leave to appeal the dissolution of restraints by the Appellate Division (M-961) is denied; and it is further

ORDERED that the motion for summary reversal on the issue of restraints (M-962) is dismissed as moot; and it is further

ORDERED that the motion for a stay (M-963) is denied; and it is further

ORDERED that the motion for leave to appeal the dismissal of the complaint of plaintiff as an individual (M-965) is denied; and it is further

ORDERED that the motion for summary reversal of the order of partial dismissal by the trial court (M-966) id dismissed as moot; and it is further

ORDERED that the motion for leave to file an overlength brief (M-967) is granted; and it is further

ORDERED that the motion to strike affidavits submitted by defendant (M-968) is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-988/989 September Term 1990

J.M., etc.,

Plaintiff-Movant,

v. ORDER

V.C., et al.,

Defendants-Respondents

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to file a supplemental brief (M-988) is granted; and it is further

ORDERED that the motion for reconsideration (M-989) is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-988/989 September Term 1990
35,000

J.M., etc.,

Plaintiff-Movant,

v.

CORRECTED
ORDER

V.C., et al.,

Defendants-Respondents

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to file a supplemental brief (M-988) is denied; and it is further

ORDERED that the motion for reconsideration (M-989) is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER,
Clerk of the Court

Area Code 202
479-3011

March 25, 1992

Mr. Harold J. Cassidy
Cassidy, Foss & San Filippo
225 Broad Street, PO Box 896
Red Bank, NJ 07701-0896

RE: J.M.,
v. V.C., et al.
Application No. A-713

Dear Mr. Cassidy:

The application for a stay in the above-entitled case has been presented to Justice Souter, who on March 25, 1992 endorsed thereon the following:

"Denied
DH Souter
25 March 1992"

Very truly yours,

WILLIAM K. SUTER, Clerk

By
/s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

NOTE - FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER,
Clerk of the Court

Area Code 202
479-3011

March 25, 1992

Mr. Harold J. Cassidy
Cassidy, Foss & San Filippo
225 Broad Street, PO Box 896
Red Bank, NJ 07701-0896

RE: J.M.,
v. V.C., et al.
Application No. A-713

Dear Mr. Cassidy:

The application for a stay in the above-entitled case has been presented to Justice Thomas, who on March 25, 1992 endorsed thereon the following:

"3/25/92
Denied
Clarence Thomas"

Very truly yours,

WILLIAM K. SUTER, Clerk

By
/s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

NOTE - FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.